

SAVE THE MANATEE CLUB, et al.
Plaintiffs,
v.
BALLARD, et al.
Defendants.

Pursuant to a prior order of this Court, on August 28, 2002, high level members of the Department of the Interior (Assistant Secretary for Fish and Wildlife and Parks Manson, Fish and Wildlife Service (FWS) Deputy Director Jones, and FWS Regional Director Hamilton) met with plaintiffs and intervenors before Magistrate Facciola. Defendants appreciate the opportunity to file a report on the outcome of the meeting. The plaintiffs have apparently not treated this meeting with the Magistrate as a confidential settlement discussion in their submission to this Court. Therefore, rather than relying solely on these reports, the defendants encourage the Court to discuss the meeting directly with Magistrate Facciola, as well, who, would be in the best position to render an impartial and unbiased report to the Court on the events that transpired during the meeting.

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meeting.

Initially, the Defendants reemphasized their commitment (as they have in prior pleadings) of complying with this Court's August 1, 2002, Order by publishing a new final rule on or before November 1, 2002, for new manatee refuges and sanctuaries throughout peninsular Florida as required under Paragraph 11 of the Settlement Agreement.¹ The Defendants also reiterated that they intended to undertake an emergency rulemaking by September 16, 2002, for seven sites in advance of the November 1, 2002, rulemaking. These sites were identified in the August 23, 2002, report filed by the Defendants.

At the meeting, Defendants provided more detail on why the seven sites were believed to require emergency designation in advance, but not in lieu of the final rulemaking in November. As discussed in the August 23, 2002, report, these sites are all (1) documented winter congregation sites (2) where there is a history of take, mostly in the form of harassment, (3) existing regulatory measures in place are not sufficient or are non-existent to prevent take, and (4) anticipated actions to be taken by State or Counties will not be implemented in time for this winter season. Emergency designation will ensure that signs are in place, water users are on notice of prohibited activities, and enforcement efforts have been planned and are in place before the winter season leads large numbers of manatees to congregate at these sites. Furthermore, higher manatee mortalities indicate that protecting these sites

¹ Plaintiffs are simply wrong when characterize the defendants' discussions with the Magistrate during the meeting. As stated both at the meeting and in prior pleadings, the Defendants fully intend to comply with the Settlement Agreement and the Court's August 1, 2002 Order. Further, with respect to emergency designations, which was the only issue before the Magistrate at this meeting, the defendants have proposed and intend to designate seven areas, for the reasons previously explained. To claim that the defendants are taking the position that they will not take any additional actions in light of the Court's order is disingenuous at best.

during the winter from activities that might affect productivity or survival is more critical than in previous years.

As indicated a number of high level officials at the Department of the Interior attended the meeting to discuss the potential designation of additional sites either under the standard designation process or, if necessary, through an emergency process. In addition, both in prior pleadings and at the meeting with Magistrate Facciola, the Department and Fish and Wildlife Service officials affirmed the agency's willingness to explore designations of sites in addition to those that are the subject of either the September 16 emergency rule or the November 1 final rule, once these emergency and new final designations are complete by November 1. In his August 7, 2002, declaration, FWS Deputy Director Jones announced the agency's interest in undertaking a public process that would allow all interested members of the public (including plaintiffs and intervenors) to have an opportunity to present information on the appropriateness of additional measures to protect manatees, including establishing additional manatee protection areas that they believe warrant consideration under the regulatory standards.

The agency officials in attendance at the meeting were prepared to engage in a constructive discussion with the plaintiffs about how to structure such a process to address their concerns. Regrettably, this did not occur. Nevertheless, the agency remains committed to engage in a public process of this type. The Service intends to propose MMPA incidental take regulations in November 2002 (per the Settlement Agreement) and is scheduled to complete the process by May 2003. These regulations will define the geographic areas where current regulations and management activities are sufficient/deficient to achieve compliance with the MMPA "negligible impact" standard. Also, the Service will submit to the Federal Register, by November 1, 2002, a notice to solicit information from

the public, including the plaintiffs, regarding the need for additional manatee protection measures.

These parallel actions will provide ample opportunity for the plaintiffs and the public to submit information regarding the need for additional manatee protection measures, both to reduce take and to achieve recovery.

Additionally the Service will use the Manatee Recovery Team to evaluate potential protective measures for manatees. The Recovery Team will have the benefit of public comments and suggestions obtained through the MMPA process and the refuges and sanctuaries notice, the assessment of the habitat recovery criteria from the Habitat Working Group (November 2002), the final determinations by the Florida Fish and Wildlife Conservation Commission ("FWCC") and the Service to establish additional protection areas (September and November, 2002, respectively), the State's Caloosahatchee River study (November 2002), the species status reviews by both the FWCC and the Service (January and March 2003, respectively), and the most up to date manatee population model outputs from U.S. Geological Survey (March 2003). The benefits of these products will be substantial. The Service believes Recovery Team input on habitat protection and other conservation measures will aid in developing future State, Federal, county and private conservation efforts, including identification of future manatee protection areas. It will also ensure that the best science is being utilized to determine manatee protection needs.

In their September 3, 2002, status report, the plaintiffs raised concerns about four areas where manatees are found, the Caloosahatchee River in Lee County, the St. John's River in Duval County, and the Halifax and Tomoka Rivers in Volusia County. The Service's August 23, 2002, report laid out the agency's rationale for not including the Caloosahatchee and St. John's River in the seven areas to be designated by emergency rulemaking in advance of the November rulemaking. Although the

issue was discussed with both the plaintiffs and Magistrate Facciola, the Plaintiffs did not concur with the agency's explanation of why emergency designation of the Caloosahatchee would not be appropriate at this time.

As to the other sites raised by the Plaintiffs, their data on the Halifax River was from a historical time frame of 1974 through February 2002. In 2001 there were three watercraft-related mortalities in the Halifax River. In 2002, there have been no carcasses recovered from the Halifax River. For the Tomoka River, historically there has been low mortality, although 3 manatee deaths were recorded in 2001. In 2002, there have been no manatee mortalities recorded. Nonetheless, the Service continues to monitor both areas and the County's progress in posting appropriate signs as well as enforcing speed zones. Defendants are prepared to provide more detailed information on the Caloosahatchee or any other site at the request of the Court.

To the extent that the Court has further questions about the meeting, the Defendants will be happy to respond. To the extent that the Court would find a response to the Plaintiffs' collateral arguments helpful, the Defendants are prepared to provide a detailed response.

Respectfully Submitted,

THOMAS L. SANSONETTI,
Acting Assistant Attorney General
Environment and Natural Resources Division
SETH BARSKY, Assistant Chief
Wildlife and Marine Resources Section

Date: _____
WAYNE D. HETTENBACH, Trial Attorney
Environment and Natural Resources Division
U.S. Department of Justice
Ben Franklin Station, P.O. Box 7369

Washington, DC 20044-7369

t: 202-305-0213

f: 202-305-0275

Attorneys for Defendant